

AMENDED IN SENATE JUNE 21, 2001  
AMENDED IN ASSEMBLY MAY 30, 2001  
AMENDED IN ASSEMBLY MAY 1, 2001  
AMENDED IN ASSEMBLY APRIL 19, 2001  
AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 489**

**Introduced by Assembly Member Migden**

February 21, 2001

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An act to add Section 10247.5 to the Business and Professions Code, to add Chapter 7.6 (commencing with Section 1922) to Title 4 of Part 4 of Division 3 of the Civil Code, and to add Sections 3398, 7508, 22168, and 50511 to the Financial Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 489, as amended, Migden. ~~Predatory loans~~ *Loans secured by real property.*

Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law provides for regulation of real estate brokers by the Department of Real Estate. Existing law provides for regulation of finance lenders and residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing savings associations, real estate brokers, and residential mortgage lenders are crimes.

This bill would prohibit real estate brokers and agents, commercial and industrial banks, savings associations, finance lenders, and residential mortgage lenders ~~from making or servicing that make or service~~ high-cost residential mortgage loans or consumer loans secured by liens on real property to consumers whose income is at or below 120 percent of the median income for the area ~~from engaging in the following lending practices in the making of high-cost loans: making a subsequent loan to refinance the original loan that results in no net economic benefit, selling of additional products in the loan agreement, making of a loan without regard to the borrower's monthly income and obligations, and charging of fees for loan services that bear no reasonable relationship to the value of services actually performed.~~ The bill would define a high-cost loan to mean a loan that has an annual percentage rate in excess of a specified rate or that has points and fees in excess of 5 percent of the loan amount. ~~The bill would also prohibit the following lending practices in the making of high-cost loans: making several subsequent loans to refinance the original loan, selling of additional products in the loan agreement without informed consent, making of a loan without regard to the borrower's ability to repay, and charging of fees for loan services that bear no reasonable relationship to the value of services actually performed.~~

Because willful violations of these provisions with respect to savings associations, real estate brokers, and residential mortgage lenders would be crimes, this bill would impose a state-mandated local program by creating new crimes.

This bill would also impose various requirements with respect to residential mortgage loans and consumer loans secured by liens on real property made or serviced by specified lenders. A willful violation of these provisions would be a crime and would permit a court to rescind the loan contract and award fees and costs, as specified.

This bill would also make a statement of legislative findings and intent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) There has been an explosion in the amount of credit made available to low-income borrowers in recent years, as a result of economic growth, technological changes, and financial innovations. A significant portion of this expansion has occurred in the subprime lending market, which refers to lending to borrowers who do not qualify for prime rates, either because of impaired credit histories or low incomes. According to the United States Department of the Treasury, subprime lending nationwide increased from \$35 billion in 1994 to \$370 billion in 1999.

(b) Subprime loans often are structured as mortgage refinancings or second mortgages. Approximately 70 percent of subprime loans are for consumer credit card consolidation. Most subprime loans are made by nondepository finance or mortgage companies that are not subject to routine regulatory compliance review.

(c) Many subprime lenders offer a vital service to low-income borrowers who do not qualify for credit from mainstream financial institutions. However, many low-income borrowers have been victimized by improper subprime lending practices such as excessive fees and interest rates, repetitive refinancings, hidden costs, unnecessary insurance, and deceptive use of balloon payments. The abusive practices found in the subprime lending industry are referred to as predatory lending. Through misleading and deceptive sales practices, predatory lenders target cash-poor homeowners as customers for high-cost loans that often deprive these homeowners of the equity in their homes.

(d) It is the intent of the Legislature to improve consumers protection against predatory lending practices.

SEC. 2. Section 10247.5 is added to the Business and Professions Code, to read:

~~10247.5. (a) No real estate broker or agent shall make or service any high-cost residential mortgage loan or consumer loan secured by a lien on real property to a consumer whose income is at or below 120 percent of the median income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard~~

~~metropolitan statistical area.~~ Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a real estate broker or agent to a consumer whose income is at or below 120 percent of the median income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.

(b) A “high-cost” loan means a loan that is either of the following:

(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately proceeding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.

(c) The following lending practices are prohibited in the making of high-cost loans:

(1) The making of ~~several subsequent loans~~ a subsequent loan to refinance the original loan, also known as ~~“flipping.”~~ “flipping,” that results in no net economic benefit to the borrower.

(2) The selling of additional products in a loan agreement ~~without informed consent~~, also known as “packing.”

(3) The making of a loan without regard to the borrower’s ~~ability to repay the loan based on accepted market standards.~~ monthly income and obligations.

(4) The charging of fees for loan services that bear no reasonable relationship to the value of services actually performed.

SEC. 3. Chapter 7.6 (commencing with Section 1922) is added to Title 4 of Part 4 of Division 3 of the Civil Code, to read:

#### CHAPTER 7.6. LOANS SECURED BY REAL PROPERTY

1922. (a) Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a real estate broker or agent, a commercial or industrial bank,

1 a savings association, or a finance lender to a consumer whose  
2 income is at or below 120 percent of the median income of the  
3 standard metropolitan statistical area in which the consumer  
4 resides or the nearest area if the consumer does not reside within  
5 a standard metropolitan statistical area.

6 (b) A “high-cost” loan means a loan that is either of the  
7 following:

8 (1) The annual percentage rate at consummation will exceed by  
9 more than 5 percentage points the yield on Treasury securities  
10 having comparable periods of maturity to the loan maturity as of  
11 the 15th day of the month immediately proceeding the month in  
12 which the application for the extension of credit is received by the  
13 creditor.

14 (2) The total points and fees payable by the consumer at or  
15 before loan closing will exceed 5 percent of the total loan amount.

16 (c) The following lending practices are prohibited in the  
17 making of high-cost loans:

18 (1) The making of ~~several subsequent loans~~ *a subsequent loan*  
19 to refinance the original loan, also known as ~~“flipping.”~~  
20 *“flipping”, that results in no net economic benefit to the borrower.*

21 (2) The selling of additional products in a loan agreement  
22 ~~without informed consent~~, also known as “packing.”

23 (3) The making of a loan without regard to the borrower’s  
24 ~~ability to repay the loan based on accepted market standards.~~  
25 *monthly income and obligations.*

26 (4) The charging of fees for loan services that bear no  
27 reasonable relationship to the value of services actually  
28 performed.

29 (d) *(l)* Before any person may provide real estate brokerage  
30 services, as defined in Section 10131 of the Business and  
31 Professions Code, to a borrower for a loan contract subject to this  
32 section, the broker shall enter into a written loan brokerage  
33 contract with the borrower that satisfies the requirement of this  
34 section.

35 ~~(e)~~

36 (2) The loan brokerage contract shall contain an explicit  
37 statement that the broker is acting as the agent of the borrower in  
38 providing brokerage services to the borrower, and when acting as  
39 agent for the borrower, the broker owes to that borrower a  
40 fiduciary duty of utmost care, honesty, and loyalty in the

1 transaction, including the duty of full disclosure of all material  
2 facts. If the broker is authorized to act as an agent for any other  
3 person relative to the transaction, the loan brokerage contract shall  
4 contain a statement of that fact and identification of that person.

5 ~~(f)~~

6 (3) The loan brokerage contract shall contain a detailed  
7 description of the services that the broker agrees to perform for the  
8 borrower, and a good faith estimate of any fees the broker will  
9 receive for those services, whether paid by the borrower, the  
10 institutional lender, or both.

11 ~~(g)~~

12 (4) The loan brokerage contract shall include a clear and  
13 conspicuous statement of the conditions under which the borrower  
14 is obligated to pay the broker for brokerage services rendered  
15 under the contract.

16 ~~(h)~~

17 (5) The loan brokerage contract shall provide that, if the broker  
18 makes a materially false statement or omission in the inducement  
19 or implementation of the contract, a court may, in addition to any  
20 other legal rights or remedies, do any of the following:

21 ~~(1)~~

22 (A) Rescind the loan brokerage contract.

23 ~~(2)~~

24 (B) Award fees paid by the borrower to the broker for brokerage  
25 services rendered by the broker pursuant to the loan brokerage  
26 contract.

27 ~~(3)~~

28 (C) Award actual costs, including attorney's fees, for enforcing  
29 the borrower's rights under the loan brokerage contract.

30 ~~(i)~~

31 (e) Any person who willfully violates any provision of this  
32 section *is guilty of a crime and* shall, upon conviction, be punished  
33 by a fine of not more than fifty thousand dollars (\$50,000), by  
34 imprisonment in a county jail for not more than one year or in the  
35 state prison, or by both that fine and imprisonment.

36 SEC. 4. Section 3398 is added to the Financial Code, to read:

37 3398. (a) ~~No commercial or industrial bank shall make or~~  
38 ~~service any high-cost residential mortgage loan or consumer loan~~  
39 ~~secured by a lien on real property to a consumer whose income is~~  
40 ~~at or below 120 percent of the median income of the standard~~

~~metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area. Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a commercial or industrial bank to a consumer whose income is at or below 120 percent of the median income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.~~

(b) A “high-cost” loan means a loan that is either of the following:

(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately proceeding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.

(c) The following lending practices are prohibited in the making of high-cost loans:

(1) The making of ~~several subsequent loans~~ *a subsequent loan* to refinance the original loan, also known as “~~flipping.~~” *“flipping,” that results in no net economic benefit to the borrower.*

(2) The selling of additional products in a loan agreement ~~without informed consent~~, also known as “packing.”

(3) The making of a loan without regard to the borrower’s ~~ability to repay the loan based on accepted market standards.~~ *monthly income and obligations.*

(4) The charging of fees for loan services that bear no reasonable relationship to the value of services actually performed.

SEC. 5. Section 7508 is added to the Financial Code, to read:

7508. (a) ~~No savings association shall make or service any high-cost residential mortgage loan or consumer loan secured by a lien on real property to a consumer whose income is at or below 120 percent of the median income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan~~



~~statistical area.~~ Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a savings association to a consumer whose income is at or below 120 percent of the median income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.

(b) A “high-cost” loan means a loan that is either of the following:

(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately proceeding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.

(c) The following lending practices are prohibited in the making of high-cost loans:

(1) The making of ~~several subsequent loans~~ a subsequent loan to refinance the original loan, also known as “flipping.” “flipping,” that results in no net economic benefit to the borrower.

(2) The selling of additional products in a loan agreement ~~without informed consent~~, also known as “packing.”

(3) The making of a loan without regard to the borrower’s ~~ability to repay the loan based on accepted market standards.~~ monthly income and obligations.

(4) The charging of fees for loan services that bear no reasonable to relationship to the value of services actually performed.

SEC. 6. Section 22168 is added to the Financial Code, to read:

22168. (a) ~~No finance lender shall make or service any high-cost residential mortgage loan or consumer loan secured by a lien on real property to a consumer whose income is at or below 120 percent of the median income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.~~ Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and



1 *consumer loans secured by liens on real property made or serviced*  
2 *by a finance lender to a consumer whose income is at or below 120*  
3 *percent of the median income of the standard metropolitan*  
4 *statistical area in which the consumer resides or the nearest area*  
5 *if the consumer does not reside within a standard metropolitan*  
6 *statistical area.*

7 (b) A “high-cost” loan means a loan that is either of the  
8 following:

9 (1) The annual percentage rate at consummation will exceed by  
10 more than 5 percentage points the yield on Treasury securities  
11 having comparable periods of maturity to the loan maturity as of  
12 the 15th day of the month immediately proceeding the month in  
13 which the application for the extension of credit is received by the  
14 creditor.

15 (2) The total points and fees payable by the consumer at or  
16 before loan closing will exceed 5 percent of the total loan amount.

17 (c) The following lending practices are prohibited in the  
18 making of high-cost loans:

19 (1) The making of ~~several subsequent loans~~ *a subsequent loan*  
20 *to refinance the original loan, also known as “flipping.”*  
21 *“flipping,” that results in no net economic benefit to the borrower.*

22 (2) The selling of additional products in a loan agreement  
23 ~~without informed consent~~, also known as “packing.”

24 (3) The making of a loan without regard to the borrower’s  
25 ~~ability to repay the loan based on accepted market standards.~~  
26 *monthly income and obligations.*

27 (4) The charging of fees for loan services that bear no  
28 reasonable relationship to the value of services actually  
29 performed.

30 SEC. 7. Section 50511 is added to the Financial Code, to read:

31 50511. (a) ~~No residential mortgage lender shall make or~~  
32 ~~service any high-cost residential mortgage loan or consumer loan~~  
33 ~~secured by a lien on real property to a consumer whose income is~~  
34 ~~at or below 120 percent of the median income of the standard~~  
35 ~~metropolitan statistical area in which the consumer resides or the~~  
36 ~~nearest area if the consumer does not reside within a standard~~  
37 ~~metropolitan statistical area. Notwithstanding any other provision~~  
38 ~~of law, this section shall apply to all high-cost residential mortgage~~  
39 ~~loans and consumer loans secured by liens on real property made~~  
40 ~~or serviced by a residential mortgage lender to a consumer whose~~

1 *income is at or below 120 percent of the median income of the*  
2 *standard metropolitan statistical area in which the consumer*  
3 *resides or the nearest area if the consumer does not reside within*  
4 *a standard metropolitan statistical area.*

5 (b) A “high-cost” loan means a loan that is either of the  
6 following:

7 (1) The annual percentage rate at consummation will exceed by  
8 more than 5 percentage points the yield on Treasury securities  
9 having comparable periods of maturity to the loan maturity as of  
10 the 15th day of the month immediately proceeding the month in  
11 which the application for the extension of credit is received by the  
12 creditor.

13 (2) The total points and fees payable by the consumer at or  
14 before loan closing will exceed 5 percent of the total loan amount.

15 (c) The following lending practices are prohibited in the  
16 making of high-cost loans:

17 (1) The making of ~~several subsequent loans~~ *a subsequent loan*  
18 *to refinance the original loan, also known as “flipping.”*  
19 *“flipping,” that results in no net economic benefit to the borrower.*

20 (2) The selling of additional products in a loan agreement  
21 ~~without informed consent~~, also known as “packing.”

22 (3) The making of a loan without regard to the borrower’s  
23 ~~ability to repay the loan based on accepted market standards.~~  
24 *monthly income and obligations.*

25 (4) The charging of fees for loan services that bear no  
26 reasonable relationship to the value of services actually  
27 performed.

28 SEC. 8. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section 17556 of  
34 the Government Code, or changes the definition of a crime within  
35 the meaning of Section 6 of Article XIII B of the California  
36 Constitution.